



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Fumiaki MARUYAMA et al.

Application No.: 09/856,139

Filed: May 29, 2001

Group Art Unit: 2814

Examiner: A. Mai

Attorney Docket. No.: 107242-00017

For: WAFER AND EPITAXIAL WAFER, AND MANUFACTURING PROCESSES THEREFOR

RESPONSE TO ELECTION/RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, D.C. 20231

May 5, 2003

Sir:

In response to the Election/Restriction Requirement mailed April 9, 2003, the Applicants hereby provisionally elect Group II, claims 45-64 with traverse. The Applicants reserve the right to file one or more divisional applications on the non-elected claims.

The Examiner has required a restriction under 35 U.S.C. §121, and has alleged that the application contains distinct inventions. However, this application is a National Phase of a PCT application under 35 U.S.C. §371, and is not an application filed under 35 U.S.C. §111(a). MPEP §1893.03(d) points out that with respect to national stage applications filed under 35 U.S.C. §371, restriction practice under 35 U.S.C. §121 is inapplicable. Rather, Unity of Invention practice under PCT Rule 13 and 37 CFR 1.475 applies. Accordingly, Restriction Requirements are governed under the Unity of Invention standards, and the Examiner must clearly specify why the claims directed to different groups of inventions lack a common special technical feature. Namely, Unity of Invention exists when claims are directed to a common special technical feature. This is discussed in detail in Chapter 1800 of the MPEP. Examples concerning Unity of Invention are given in the Annex to the MPEP.

8/ Election
G. Stutz
5-7-03

TECHNOLOGY CENTER 2800

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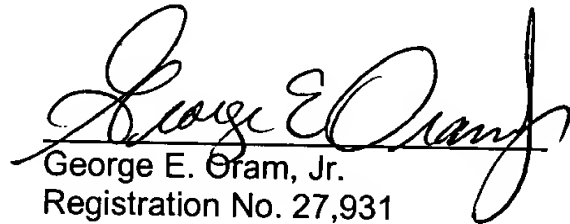
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The Examiner states in the Office Action that "Inventions Group I and II are related as process of making and product made". The Examiner further states that "Inventions Group I & II and Group III are related as product/process of apparatus for its practice". Accordingly, the Examiner has acknowledged that there is a single general inventive concept under PCT Rule 13.1.

In view of the Applicants' above traversal, Applicants respectfully submit that the Restriction Requirement should be withdrawn. Provisionally, in the event the requirement is made final, the Applicants elect Group II. Accordingly, Applicants respectfully provisionally request examination of elected claims 45-64 on the merits.

Please charge any fee deficiency or credit any overpayment to Deposit Account No. 01-2300, referring to client-matter number 107242-00017.

Respectfully submitted,


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